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**FILED**

APR 08 2013

Board of Vocational Nursing  
and Psychiatric Technicians

BEFORE THE  
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2011-2660

MARY PETRA OSBORNE  
1136 Persimmon Avenue  
El Cajon, CA 92021

**ACCUSATION**

Vocational Nurse License No. VN 47256

Respondent.

Complainant alleges:

**PARTIES**

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about May 21, 1971, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 47256 to Mary Petra Osborne (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2013, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws.

All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118(b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Bureau jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Bureau may renew an expired license at any time within four years after the expiration.

5. Section 2875 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

6. Section 2892.1 of the Code provides, in pertinent part:

Except as provided in Sections 2892.3 and 2892.5, an expired license may be renewed at any time within four years after its expiration upon filing of an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees, and payment of any fees due pursuant to Section 2895.1.

## STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

....

(b) Considering suspension of a license under Section 490. Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

....

8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

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1        9.     Section 493 of the Code provides, in pertinent part, that the record of conviction of a  
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
3 and the board may inquire into the circumstances surrounding the commission of the crime in  
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
5 qualifications, functions, and duties of the licensee in question.

6        10.    Section 2878 of the Code states:

7                The Board may suspend or revoke a license issued under this chapter [the  
8 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the  
9 following:

10              (a) Unprofessional conduct, which includes, but is not limited to, the  
11 following:

12              ....

13              (d) Violating or attempting to violate, directly or indirectly, or assisting in or  
14 abetting the violating of, or conspiring to violate any provision or term of this chapter.

15              ....

16              (f) Conviction of a crime substantially related to the qualifications, functions,  
17 and duties of a licensed vocational nurse, in which event the record of the conviction  
18 shall be conclusive evidence of the conviction.

19              ....

20        11.    Code section 2878.6 states:

21                A plea or verdict of guilty or a conviction following a plea of nolo contendere  
22 made to a charge substantially related to the qualifications, functions and duties of a  
23 licensed vocational nurse is deemed to be a conviction within the meaning of this  
24 article. The board may order the license suspended or revoked, or may decline to  
25 issue a license, when the time for appeal has elapsed, or the judgment of conviction  
26 has been affirmed on appeal or when an order granting probation is made suspending  
27 the imposition of sentence, irrespective of a subsequent order under the provisions of  
28 Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty  
and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing  
the accusation, information or indictment.

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## REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 2504.1, states:

If the board or its designee asks a licensee to provide criminal history information, a licensee shall respond to that request within 30 days. The licensee shall make available all documents and other records requested and shall respond with accurate information.

13. California Code of Regulations, title 16, section 2518.6(b)(4), states:

....

(b) A licensed vocational nurse shall adhere to standards of the profession and shall incorporate ethical and behavioral standards of professional practice which include, but are not limited to the following:

....

(c) A violation of this section constitutes unprofessional conduct for purposes of initiating disciplinary action.

14. California Code of Regulations, title 16, section 2521, states, in pertinent part:

For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed vocational nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational nurse to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of chapter 5 of Division 2 of the Business and Professions Code.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of Chapter 6.5, Division 2 of the Business and Professions Code.

(d) Aiding and assisting, or agreeing to aid or assist any person or persons, whether a licensed physician or not, in the performance of or arranging for a violation of any of the provisions of article 13, Chapter 5, Division 2 of the Business and Professions Code.

(e) Conviction of a crime involving fiscal dishonesty.

(f) Any crime or act involving the sale, gift, administration, or furnishing of "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the Business and Professions Code.

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1 15. California Code of Regulations, title 16, section 2522 states, in pertinent part:

2 When considering . . . b) the suspension or revocation of a license on the  
3 ground that a licensee has been convicted of a crime, . . . the Board in evaluating the  
4 rehabilitation of an individual and his or her present eligibility for a license, will  
5 consider the following criteria:

6 (1) Nature and severity of the act(s), offense(s), or crime(s) under  
7 consideration.

8 (2) Actual or potential harm to the public.

9 (3) Actual or potential harm to any patient.

10 (4) Overall disciplinary record.

11 (5) Overall criminal actions taken by any federal, state or local agency or  
12 court.

13 (6) Prior warnings on record or prior remediation.

14 (7) Number and variety of current violations.

15 (8) Mitigation evidence.

16 (9) In case of a criminal conviction, compliance with terms of sentence and/or  
17 court-ordered probation.

18 (10) Time passed since the act(s) or offense(s) occurred.

19 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to  
20 Penal Code section 1203.4.

21 (12) Cooperation with the Board and other law enforcement or regulatory  
22 agencies.

23 (13) Other rehabilitation evidence.

#### 24 **COST RECOVERY**

25 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
26 administrative law judge to direct a licentiate found to have committed a violation or violations of  
27 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
28 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
included in a stipulated settlement.

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**FIRST CAUSE FOR DISCIPLINE**

**(January 5, 2012 Criminal Conviction for Burglary on December 30, 2011)**

17 Respondent is subject to disciplinary action under sections 490 and 2878, subdivision (f), in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a vocational nurse. The circumstances are as follows:

18. On or about January 5, 2012, in a criminal proceeding entitled *People of the State of California v. Mary Osborne*, in the Superior Court of California, County of San Diego, East County Division, in Case Number C317302, Respondent was convicted on her plea of guilty of violating Penal Code section 459 (burglary), a felony, which was reduced to a misdemeanor pursuant to Penal Code section 17(b)(4).

19. As a result of the conviction, the Court placed Respondent on three years summary probation and ordered her to serve 13 days in the county jail, with 13 days credit for time served, pay various fines and fees, and stay away from Sears, Parkway Plaza.

20. The circumstances surrounding the conviction are that on December 30, 2011, at approximately 8:30 p.m., El Cajon Police Department officers responded to Sears Department Store in El Cajon, California, regarding a shoplifting suspect in custody of loss prevention staff. Upon arrival, officers were informed that the store's loss prevention staff observed Respondent remove a Tommy Hilfiger women's perfume from its box, place it in a black hand purse she was carrying, and leave the store without paying for the perfume. Loss prevention staff made contact with Respondent outside the store and discovered additional merchandise in Respondent's purse that Respondent had taken and not paid for. The total value of the items taken was placed at \$235. Officers placed Respondent under arrest and transported her to Las Colinas Women's Facility for booking.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Failure to Respond to Board's Inquiry)**

3 21. Respondent is subject to disciplinary action under section 2878(a) on the grounds of  
4 unprofessional conduct as defined by California Code of Regulations, title 16, section 2504.1, in  
5 that she failed to respond to a Board inquiry. The circumstances are as follows:

6 22. On or about January 11, 2012 and June 26, 2012, the Board mailed Respondent  
7 requests to submit information, within 30 days, in the form of a detailed description of the  
8 December 30, 2011 arrest for burglary that is detailed in the First Cause for Discipline, above.  
9 Respondent failed to respond to the Board's inquiry.

10 **DISCIPLINARY CONSIDERATIONS**

11 23. To determine the degree of discipline, if any, to be imposed on Respondent for the  
12 violations alleged above, pursuant to California Code of Regulations, title 16, section 2522,  
13 Complainant alleges:

14 24. In a prior disciplinary action in Citation Number CV-2011-2307, the Board assessed  
15 Respondent a \$250 fine for violating Code section 2892.5 and California Code of Regulations  
16 section 2540.1(a). The circumstances are as follows:

17 25. On or about January 17, 2012, Respondent's license was randomly selected by the  
18 Board for an audit of compliance with continuing education requirements for license renewal, as  
19 Respondent's license was due to expire on February 28, 2011. The audit period was February 28,  
20 2009 through February 28, 2011. On June 2, 2011, August 2, 2011 and November 22, 2011, the  
21 Board mailed Respondent written requests to submit proof of continuing education and  
22 Respondent failed to submit such proof, in violation of California Code of Regulations, title 16,  
23 section 2892.5. The administrative fine remains outstanding.

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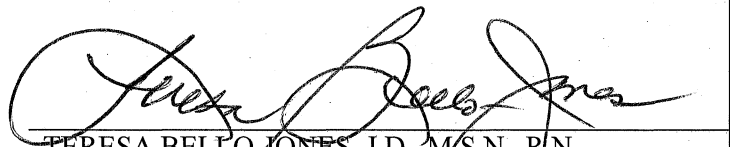
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 47256, issued to Mary Petra Osborne;
2. Ordering Mary Petra Osborne to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: **APR 08 2013**

  
TERESA BELLO-JONES, J.D., M.S.N., R.N.  
Executive Officer  
Board of Vocational Nursing and Psychiatric Technicians  
Department of Consumer Affairs  
State of California  
*Complainant*

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